

Amendment under 37 C.F.R. §1.111
Attorney Docket No. 053362
Application No. 10/561,538

REMARKS

Claims 1, 4, 5, 7-13, 15, 16 and 18-20 are pending in the present application. Claims 8-13, 15, 18 and 19 are withdrawn from consideration. Claim 1 is herein amended. Claim 17 is canceled. No new matter has been presented.

Information Disclosure Statement

An Information Disclosure Statement (IDS) was filed on August 27, 2009 which included the full English translation of Ryoji. Applicants request consideration of the IDS.

Claim Rejections - 35 U.S.C. § 103

Claims 1, 4, 5, 7, 16 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over **McCaffrey** (US 2001/0038450) in view of **Ryoji** (Engineering Materials, 1999); and claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over **McCaffrey** in view of **Ryoji** and further in view of **Rapp** (US 6,602,464) and **Mitoma** (US 6,144,448).

Favorable reconsideration is requested.

(1) Applicants respectfully submit that the invention as recited in the claims is non-obvious over the prior art because the invention as recited in the claims provides unexpected results over the prior art.

The results in Table 4 demonstrate that even though grounding is set in the photometry chamber as taught in McCaffrey, the background value is not suppressed, but that when an anti-static sheet is used, the background value is suppressed.

The Office Action takes the position that the use of electrostatic elimination material is taught in Ryoji, and further that Ryoji teaches the superiority of using electrostatic elimination

material rather than merely grounding an integrated circuit. (Office Action, page 4.) However, there is nothing in the prior art references to suggest that the use of electrostatic elimination material is superior to merely grounding the integrated circuit. Ryoji merely teaches an improved antistatic material. Ryoji does not teach or suggest the superiority of using an antistatic material over the use of grounding as alleged in the Office Action.

(2) Applicants respectfully submit that McCaffrey in view of Ryoji does not teach or suggest “making an atmosphere surrounding a reaction vessel and/or a reaction vessel in a photometry chamber electrically constant” as recited in amended claim 1.

First, the Office Action acknowledges that “McCaffrey does not specifically teach what ‘some other means’ are.” (Office Action, page 2.) The Office Action states that “Ryoji teaches static elimination materials that can be used to eliminate static in the air” (emphasis added), citing the title of Ryoji. (Office Action, page 2.) However, the title of Ryoji does not suggest removing static in the air. The title of Ryoji is “Prevention of product troubles by static electricity failure. Static electricity removal and static elimination materials. Development cases of static elimination materials. Thus, the title of Ryoji does not suggest eliminating static in the air as alleged in the Office Action, and even if McCaffrey is modified to include a static elimination material as taught in Ryoji, the modified device would still not be able to remove static electricity in the air.

Second, the Office Action takes the position that Ryoji discloses the materials for making the atmosphere electrically constant. (Office Action, page 4.) However, as previously pointed out (Amendment, August 27, 2009, pages 10-13), even if McCaffrey is modified to include the

materials of Ryoji, the atmosphere surrounding the reaction vessel would not be electrically constant. Even when the measurement is performed using the photometry chamber, wherein the photometry chamber is made of Novalloy E and it is connected to the grounding, the Novalloy E cannot make an atmosphere surrounding a reaction vessel and/or an atmosphere surrounding the reaction vessel in the photometry chamber electrically constant.

Ryoji discloses the use of Novalloy E, which is a “Persistent static elimination ABS resin.” (See Ryoji, Title.) Additionally, according to Ryoji, Novalloy E is electrically conductive material, just like aluminum. (See the complete English translation of Ryoji submitted with the Information Disclosure Statement of August 27, 2009, specifically at page 1, lines 18-28; page 2, lines 14-19 and 24-28; page 3, lines 8-15; page 3, line 18 to page 4, line 6; page 5, lines 22-24 and page 6, line 19 to page 7, line 14.)

Therefore, when the photometry chamber or reaction vessel is made with the Novalloy E and according to the disclosure of McCaffrey which states that “Conventionally, a sample compartment of known devices must be made of a conductive material” (paragraph 15), the photometry chamber is conductive.

This conductive photometry chamber is the same as the photometry chamber of which an aluminum foil was set at the undersurface. (Specification, page 38, lines 6-7.) In Example 3 which uses this photometry chamber, when the reagent cartridge becomes electrically charged, the electric charge is removed through the aluminum foil as the grounding. (Specification page 38, lines 16-17.) However, as is clear from Table 4, the background value can not be suppressed even though the electric charge of the reagent cartridge is removed by using grounding such as

by setting the aluminum foil at the undersurface of the photometry chamber. From this result, it is demonstrated that electrostatic charge of the reagent cartridge does not affect the increase of background value. That is, it is understood from the result that background value cannot be suppressed even though the grounding is set in the photometry chamber. (Specification, page 39, line 13 to page 40, line 1.)

Thus, even when the measurement is performed using the photometry chamber, wherein the photometry chamber is made of Novalloy E and it is connected to the grounding, the objective of the present invention cannot be accomplished (background value is not able to be reduced.). That is, Novalloy E cannot make an atmosphere surrounding a reaction vessel and/or an atmosphere surrounding the reaction vessel in the photometry chamber electrically constant.

As explained above, even when static electricity is removed from the photometry chamber made of conductive material through the grounding, it is impossible to make an atmosphere surrounding a reaction vessel and/or an atmosphere surrounding the reaction vessel in the photometry chamber electrically constant. Therefore, McCaffrey in view of Ryoji does not teach or suggest all of the elements as recited in claim 14.

According to the present invention, electric charge in an atmosphere in a photometry chamber is prevented from transferring to the surface of a solution by, for example, making an atmosphere surrounding a reaction vessel and/or an atmosphere surrounding the reaction vessel in the photometry chamber electrically constant by using gas having a constant electric charge, a neutralization apparatus, or a material having a static electricity elimination effect. An object of the present invention is to prevent the increase of background value in the measurement of the

value of the light such as luminescence, fluorescence, or phosphorescence. (Specification, paragraph 76 and 96.) Such object cannot be obtained only by removing static electricity from the reaction vessel.

(3) Applicants respectfully submit that it would not have been obvious to combine the teachings of McCaffrey and Ryoji.

McCaffrey discloses that “many photodetecting transducers used for the detection of luminescence are very sensitive to static charge.” (McCaffrey, paragraph 15, lines 1-3.) It is known that resin easily charges with electricity. Novalloy E disclosed in Ryoji is made of ABS resin. (Ryoji, Title.) Therefore, one of ordinary skill in the art would not use Novalloy E which is made of resin as a material of the photometry chamber in McCaffrey.

In addition, as is mentioned in McCaffrey, “conventionally, a sample compartment of known devices must be made of a conductive material.” (McCaffrey, paragraph 15, lines 1-7.) In general, a photometry chamber is made of metal which is a conductive material, and metal is much more conductive than Novalloy E which is resin. Therefore, one of ordinary skill in the art would not select resin as a material of photometry chamber.

The Office Action takes the position that all resins are different, and that Novalloy E has the property of persistently eliminating electrostatic effect. (Office Action, page 5.) However, the fact that Novalloy E has the property of persistently eliminating electrostatic effect, does not mean that it does not easily charge with electricity or that it is as conductive as metal.

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For at least the foregoing reasons, claims 1, 4, 5, 7, 16 and 20 are patentable over the cited references. Accordingly, withdrawal of the rejection of claims 1, 4, 5, 7, 16 and 20 is hereby solicited.

In view of the aforementioned amendments and accompanying remarks, Applicants submit that the claims, as herein amended, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP

/Andrew G. Melick/

Andrew G. Melick
Attorney for Applicants
Registration No. 56,868
Telephone: (202) 822-1100
Facsimile: (202) 822-1111

AGM/adp